

**OPINION**  
**55-109**

July 25, 1955           (OPINION)

SPECIAL SCHOOL DISTRICTS

RE: Admission of Pupils

This is in reply to your letter of July 21, 1955, wherein you ask our opinion in regard to the following questions:

1. Assuming that the school board has determined that overcrowded conditions are created by the admission of pupils residing within the special school district, may the school board refuse admission to any pupils from, or children or persons not living in the special school districts?
2. Assuming that pupils residing within the special school district do not create crowded conditions, but that admission of all pupils do not create crowded conditions, but that admission of all pupils from other districts desiring admission would create crowded conditions, may the school board admit pupils from some adjacent districts and refuse to admit pupils from other adjacent districts?
3. Assuming that the board determines that overcrowded conditions would exist with the admission of some pupils from other districts, and must draw the line for admission, may the school board admit those pupils who have been previously enrolled from all school districts and refuse to accept enrollment of any new pupils from all school districts?

Amendment I of chapter 136 of the 1955 Session Laws amends section 15-2511 of the 1953 Supplement, but is applicable only to common school districts.

Your district being a special school district is governed, we believe, in this matter by the provisions of section 15-29082 of the 1953 Supplement, as amended by amendment 2 of chapter 136 of the 1955 Session Laws.

Section 15-29082, as amended by amendment 2 of chapter 136 of the 1955 Session Laws, reads as follows:

"Admission of pupils from other districts - Tuition. The board of education of any special school district shall admit to the schools of the district pupils other than high school pupils from other districts when it can be done without injuring or overcrowding the schools, and shall make regulations for the admission of such pupils. When a pupil is admitted from another district, credit on his tuition shall be given by the district admitting him to the extent of school taxes paid in the admitting district by the parent or guardian of the

admitted pupil. If the attendance of a pupil from another district is necessitated by shorter distance or other reasons of convenience, approval or disapproval shall be given by the county superintendent of schools within fifteen days after consulting the boards of education of both districts concerned, and the balance of the tuition, after credit for taxes paid, shall be paid by the district from which the pupil is admitted, but the whole amount of tuition shall not exceed the average cost of elementary education per child in the county. Such costs shall include expenditures from the general and sinking and interest funds."

After the reading of the above-quoted statute, it is obvious that a board of a special school district is required to admit pupils from other districts other than high school pupils to the schools in its district when it can be done without injuring or overcrowding the schools, and the board may make regulations for the admission of such pupils.

It is our view that much is left to the discretion of the board in the matter of accepting or rejecting pupils from other districts. We believe where accepting pupils from all the districts that apply would create crowded conditions, the district could agree to accommodate pupils from some of the applying districts and the board can choose which districts to accommodate. If conditions are such that to accept any outside pupils would create crowded conditions or overtax present school facilities a board, we believe, may refuse to accept any pupils from outside districts.

We further believe that if your district has in the past accepted pupils from certain districts, and to now accept a greater number of pupils from each of these districts would cause overcrowding and injure your school operation, that your board may legally refuse to accept a greater number of pupils from any district than it has heretofore accepted into its schools. In other words, if your district has in the past accepted twenty pupils from each of three districts your board can agree to accept that number and no more, if conditions do not warrant the accommodation of any more pupils from the outside.

LESLIE R. BURGUM

Attorney General